UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CAR-FRESHNER CORPORATION, and

JULIUS SÄMANN LTD.,

Plaintiffs,

v.

IN-MAR TRADING, INC.,

KEPCO, INC. d/b/a INMAR TRADING INC. and I.M.T.,

YAKIMA DE CAROLINA, INC.,

ALMACENES YAKIMA DE CAGUAS, INC.,

CENTRO COMERCIAL SAN JOSE, INC.,

STAR BROTHERS, INC., and

MR. JULIO ESTRELLA,

Defendants.

Civil Action No.: 02-2660

Date: ________
Time: ________
Ctrm: ________

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CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

ORDER ON PLAINTIFFS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER, INCLUDING *EX PARTE* SEIZURE, AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND ORDER FOR EXPEDITED DISCOVERY

Plaintiffs, Car-Freshner Corporation ("Car-Freshner") and Julius Sämann, Ltd. ("JSL") (hereinafter collectively "Plaintiffs") having applied for an *ex parte* seizure order, Temporary Restraining Order ("TRO") and Order to Show Cause for Preliminary Injunction under Fed. R. Civ. P. 65 and the Lanham Act, 15 U.S.C. §1065 *et seq*., and for expedited discovery under Fed.

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R. Civ. P. 30(a) and 34(b), and the Court having reviewed the papers filed by the Plaintiffs, the Court issues the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law

1. This Court has subject matter jurisdiction over this proceeding pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) and (b) and 1367(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

3. Plaintiff Car-Freshener is the exclusive licensee within the United States and its Territories of three valid, incontestable U.S. Trademark Registration Nos. 719,498, 1,781,016 and 1,791,233 owned by Plaintiff JSL covering the shape or configuration of its air freshener products that are in the design of a tree (hereinafter "Tree Design Marks"). Car-Freshener also is the exclusive licensee within the United States and its Territories of the valid, incontestable U.S. Trademark Registration No. 675,796 owned by JSL covering the mark CAR-FRESHNER (hereinafter the "CAR-FRESHNER Mark"). Plaintiffs and their predecessors have been manufacturing and distributing air freshener products in the shape of Plaintiffs' Tree Design Marks with the CAR-FRESHNER Mark in the United States for 50 years including in Puerto Rico since at least 1955.

4. Plaintiffs have demonstrated that Defendant In-mar Trading, Inc. ("Inmar") and Defendant Yakima De Carolina, Inc., Almacenes Yakima De Caguas, Inc., Centro Comercial San Jose, Inc., Star Brothers, Inc. and Julio Estrella (hereinafter collectively the "Topeka Defendants") are distributing and selling air freshener products, several color copies of which are attached to this Order as Exhibit A ("Defendants' Products") in this judicial district.

5. Plaintiffs have demonstrated that an *ex parte* seizure order is necessary to achieve the purposes of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

6. Plaintiffs have not publicized the requested seizure.

7. Plaintiffs have demonstrated that Plaintiffs are likely to succeed in showing that Inmar and the Topeka Defendants are knowingly using a counterfeit mark in connection with the sale, offering for sale or distribution of Defendants' Products, namely the configuration of Defendants' Products, which is a counterfeit of Plaintiffs' Tree Design Mark and which bears a counterfeit of Plaintiffs' CAR-FRESHNER Mark within the meaning of 15 U.S.C. §§ 1116(d)(4)(B)(iii) and which infringes those marks within the meaning of 15 U.S.C. § 1114.

8. An immediate and irreparable injury will occur if an *ex parte* seizure is not ordered.

9. Defendants' Products to be seized are located at the following premises:

Inmar Trading, Inc.
Rd 695 Km 0 Hm 5
Higuillar Ward
Dorado, Puerto Rico 00646

Tienda Topeka
Carolina Shopping Court
65th Infantry
Carolina, Puerto Rico

Tienda Topeka
Paseo De Diego # 158
Rio Piedras, Puerto Rico

Tienda Topeka
San Jose Shopping Center
San Juan, Puerto Rico

Tienda Topeka
Calle Ruiz Belvis # 63
Caguas, Puerto Rico

Star Brothers, Inc.
Calle Matadero Esq. B
Urbanizacion Julia
Puerto Nuevo, Puerto Rico

10. The harm to Plaintiffs, if their application for an *ex parte* seizure order and for a temporary restraining order is denied, outweighs the harm to the legitimate interests of the defendants if the application for an *ex parte* seizure order is granted; and

11. The Defendants and persons acting in concert with the Defendants would destroy, move, hide or otherwise make inaccessible to the court Defendants' Products and related evidence, if Plaintiffs were to proceed on notice to the Defendants.

THEREFORE, IT IS HEREBY ORDERED that:

12. The U.S. Marshals or Other Law Enforcement Officer shall go to the Defendants' Premises identified in Paragraph 9 above and seize the following materials: a) all of Defendants' Products depicted in Exhibits 1-5 to Carlos Santana's Declaration and Exhibits 10-12 to Richard Flechtner's Declaration, attached to this Order, as well as any other air freshener products that are in the shape of a Tree Design similar to the design of the products depicted in the Exhibits detailed herein (regardless of color or fragrance) and any air fresheners bearing the trademark CAR-FRESHNER under packaging bearing the words "FRESH SCENTS" (hereafter collectively the "Counterfeit Products"); b) all documents, packages or other records that relate to or evidence Defendants' acquisition, importation, offer to sell, sale or distribution of the Accused Products.

13. The U.S. Marshals or Other Law Enforcement Officer shall conduct this seizure of evidence after this Order is issued but before November 19, 2002, which date is not later than seven days after the date on which this Order issued.

14. Any materials seized pursuant to this Order shall be deposited into the custody of the U.S. Marshall and/or Consultants Resources International and shall be preserved for use as evidence in this action.

15. Plaintiffs shall post a corporate surety bond, cash or a certified check in the total amount of $10,000 as security determined adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or restraint hereunder.

16. Unless first waived by all of the parties via a written stipulation filed with the Court two (2) business days in advance, all Parties (Plaintiffs and Defendants) shall appear for a hearing before the Honorable Magistrate Judge Gustavo Gelpi, Judge of this Court in courtroom ___ at the United States District Court for the District of Puerto Rico, Chardón Avenue, Hato Rey, Puerto Rico, on November 22, 2002 at 3:00 A.M./P.M. or as soon thereafter as counsel can be heard, and Plaintiffs shall have the burden to prove that the facts supporting the findings of fact and conclusions of law stated in this Order are still in effect.

17. Defendant Inmar and each of the Topeka Defendants ("Defendants") and each of their officers, agents, employees, and/or representatives and any and all persons or entities acting under their direction and control, are enjoined, pending the hearing on Plaintiffs' application for a Preliminary Injunction, from, without further order of the Court or Plaintiffs' written consent, (1) manufacturing, distributing, importing, exporting, offering for sale or selling any Counterfeit Products; (2) moving, destroying, or otherwise disposing of any Counterfeit Products or any business records or documents relating to any Counterfeit Products; (3) diverting or redirecting to another country any Counterfeit Products presently in transit or otherwise destined for the United States including Puerto Rico; and (4) assisting, aiding, abetting, facilitating or

encouraging the spoliation of any evidence by any person or entity relating to the Counterfeit Products.

18. Defendants are ordered to show cause before the Honorable Magistrate Judge Gustavo Gelpi ______, Judge of this Court in courtroom ___ at the United States District Court for the District of Puerto Rico, Chardón Avenue, Hato Rey, Puerto Rico, on November 22, 2002 at 3:00 ~~A.M.~~/P.M. or as soon thereafter as counsel can be heard, why an Order should not be entered granting Plaintiffs a Preliminary Injunction enjoining, pending the outcome of the trial in this action, Defendants Inmar and the Topeka Defendants and each of their officers, agents, employees, and/or representatives, and any and all persons or entities acting under their direction or control, from, without further order of the Court or Plaintiffs' written consent, (1) manufacturing, distributing, importing, exporting, offering for sale or selling Counterfeit Products, (2) moving, destroying or otherwise deposing of any Counterfeit Products or any business records or documents relating to them; and (3) diverting or redirecting to another country any Counterfeit Products presently in transit or otherwise destined for the United States.

19. Defendants' answering papers, if any, shall be filed with Clerk of this Court and served upon the attorneys for Plaintiffs by personally delivering copies thereof to the offices of Fiddler González & Rodríquez, LLP, BBVA Tower, 254 Muñoz Rivera Avenue, 6th Floor, Hato Rey, Puerto Rico 00918, Telephone: 787-753-3113, Attention: Cesar Alcover, Esquire; and Oblon, Spivak, McClelland, Maier & Neustadt, P.C., 1755 Jefferson Davis Highway, Fourth Floor, Arlington, Virginia 22202 Attention: Roberta S. Bren, Esquire and Brian B. Darville, Esquire before 1:00 ~~A.M.~~/P.M. on November 21, 2002. Any reply by Plaintiffs shall be filed and served personally before 11:00 A.M./~~P.M.~~ on November 22, 2002.

20. Discovery herein may begin immediately and Plaintiff may with the service of this Order (after the seizure ordered above has been conducted) or thereafter serve discovery requests which Defendants shall respond to within 10 days of service thereof and deposition notices which may notice depositions on five (5) days notice.

21. Defendants are hereby given notice that failure to attend the hearing(s) scheduled herein shall result in immediate issuance against them of the preliminary injunction sought by Plaintiffs to take effect immediately upon expiration or dissolution of this Temporary Restraining Order. Defendants are hereby given further notice that they shall be deemed to have actual notice of the issuance and terms of such order and that any act by them or any one of them in violation of any of the terms thereof may be considered and prosecuted as contempt of this Court.

Entered: November 14th, 2002

Hour: 2:10 P.M.

United States District Judge
For the District of Puerto Rico